

**Tuesday, September 14, 2010**

The Board met at its offices at 450 N Street, Sacramento, at 10:28 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby, Ms. Steel and Mr. Chiang present.

### **SPECIAL PRESENTATIONS**

#### **Presentation of Retirement Resolution to Randie L. Henry**

On behalf of the Board, Ms. Yee presented to Randie L. Henry, Deputy Director, Sales and Use Tax Department, a retirement resolution, extending its sincere and grateful appreciation for her dedicated service to the State Board of Equalization and the State of California. Members made complementary remarks regarding their experiences with Ms. Henry and her exceptional work with the Board of Equalization, describing her as 'a star' with a 'can-do' attitude, and wished her well in her retirement. Ms. Henry thanked the Members and then thanked her staff.

#### **Presentation of Retirement Resolution to Ramon J. Hirsig**

On behalf of the Board, Ms. Yee presented to Ramon J. Hirsig, Executive Director, a retirement resolution, extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California. Ms. Yee introduced Mr. Hirsig's family members who were in the audience, wife Vickie, son Peter, daughter-in-law Trina, and grandchildren Logan and Chase. Members made complementary remarks regarding Mr. Hirsig's exceptional work and leadership with the Board of Equalization, describing him as trusted, accessible and accountable, and wished him well in his retirement. Mr. Hirsig thanked the Members, his staff, and then his family.

Cathy Stroh, Associate Governmental Program Analyst, Appeals Division, Legal Department, on behalf of Capitol Area Child Care Consortium, Inc., the nonprofit organization that oversees the daycare at BOE's Headquarter, thanked Mr. Hirsig for his support in reopening the daycare center.

Ms. Mandel entered the Board room, present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

James N. Smith, 510914  
1992, \$841.98 Claim for Refund  
For Appellant:

James N. Smith, Taxpayer  
Charles E. Smith, Jr., Attorney  
Jane Perez, Tax Counsel  
Suzanne Small, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issue: Whether appellant filed his refund claim within the applicable statute of limitations.

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Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Sophia A. Dority, 506726  
1999, \$9,172.31 Assessment  
2000, \$29,097.24 Assessment  
2002, \$721.60 Assessment  
2004, \$3,812.49 Assessment

For Appellant:

Sophia A. Dority, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Kathleen Cooke, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant timely elected innocent spouse relief (ISR) as required in order to be eligible for relief pursuant to Revenue and Taxation Code (R&TC) section 18533, subdivisions (b), (c) and (h).

Whether the Board has jurisdiction to consider appellant's request for equitable ISR under subdivision (f) of R&TC section 18533, pursuant to the Board's opinion in the *Appeal of Patricia Tyler-Griffis*, 2006-SBE-004, December 12, 2006 decision (*Tyler-Griffis*).

Assuming the Board has jurisdiction, whether appellant has demonstrated that she is entitled to innocent spouse relief for any of the years at issue.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 9.1](#))

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Teresa Benjamin, 487973  
2000, \$2,203.00 Claim for Refund

For Appellant:

Teresa Benjamin, Taxpayer

Jeff Johnston, Representative

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant's claim for refund is barred by the statute of limitations.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 9.2](#))

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 9.3](#))

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

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### LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Sermed Hanna, 458269 (KH)

7-1-03 to 12-31-06, \$67,676.05 Tax, \$7,034.60 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

J. J. Re-Bar Corporation, 439385 (KH)

4-1-04 to 3-31-07, \$59,424.77 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Greg Childress, Inc., 415437 (UT)

February 8, 2006, \$76,054.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Paramount Disc Manufacturing, Inc., 492202 (EA)

1-1-04 to 12-31-06, \$316,987.71 Tax, \$31,698.80 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Khaled W. Zakher, 532992 (ET)

February 2, 2010, \$972.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Chi Linh Do, 530886 (ET)

February 6, 2010, \$876.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

### CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Leonard Shlain (Deceased) and Ina Gyemant, 485102.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Lynn Figone (Gallagher), 479637

2004, \$1.00 or more Innocent Spouse Relief

Action: Sustain the action of the Franchise Tax Board.

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Christopher Barker, 461542

1991, \$1,043.79 Claim for Refund

Action: Sustain the action with concession by the Franchise Tax Board.

James Bertuzzi and Kristine Bertuzzi, 459767

2003, \$92.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ronald A. Brown, 493197

2006, \$357,490.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Bradley S. Doland, 507702

2001, \$579.00 Assessment, \$205.25 Penalty

2005, \$2,089.00 Assessment

2007, \$1,678.00 Assessment

Action: Sustain the action of the Franchise Tax Board and impose frivolous appeal penalties totaling \$750 (i.e., \$250 for 2001, \$250 for 2005, and \$250 for 2007).

Katherine J. Dunn, 496110

2007, \$1,342.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Alma Leticia Garcia, 504669

2008, \$405.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Beth-Ann Kozlovich and Jeff Kozlovich, 419987

1989, \$363.00 Assessment

Action: Sustain the action with concession by the Franchise Tax Board.

Dean R. Lewinson and Mary K. Quinn Lewinson, 489727

2004, \$892.25 Claim for Refund

2005, \$1,778.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Martha S Milicich, 422550

2005, \$368.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Yina Nunez, 473874

2007, \$1,050.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Ravindranath Patel, MD and Naina Patel, 467727

2002, \$483,687.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jonathan B. Ryder, 476244

2005, \$20,687.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Leonard Shlain (Deceased) and Ina Gyemant, 485102

2007, \$960.94 Claim for Refund

Action: The Board took no action.

Lonalee Virgo, 506900

2005, \$1,269.00 Assessment, \$317.25 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Daniel L. Mahnke, 473875

2005, \$92.00 Tax, \$92.00 Late Filing Penalty, \$23 Notice and Demand Penalty,

\$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing but modify the action of the Franchise Tax Board.

Frank Martin, 489367

2004, \$19,409.00 Assessment

Action: Deny the petition for rehearing.

Darrell L. Rich, 462017

2005, \$8,690.00 Assessment, \$2,172.50 Late Filing Penalty, \$2,172.50 Notice and Demand Penalty, \$122.00 Filing Enforcement Fee, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Clovus M. Sykes, 492696, 492702

2001, \$334.00 Tax, \$83.50 Penalty, \$375.00 Frivolous Appeal Penalty

2004, \$632.00 Tax, \$158.00 Penalty, \$375.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

#### **HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Yolanda Biggs, 425550

2007, \$289.58

Action: Reverse the action of the Franchise Tax Board.

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Astrid Hilo, 449844

2007, \$93.53

Action: Sustain the action of the Franchise Tax Board.

Denna Hornesby, 472836

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

David P. Jason II, 423016

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Vu C. Luong, 445403

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Elfriede Maitland, 485635

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Ranasee Maldonado, 443875

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Judith A. Manko, 444489

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Gilma Martinez, 445538

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Linda Mondragon, 484950

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Gregory W. Petersen, 426152

2007, \$1.00 or more

Action: Modify the action of the Franchise Tax Board.

Earnest Robinson III, 440641

2007, \$1.00 or more

Action: Modify the action with concession by the Franchise Tax Board.

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Eduardo Rodriguez, 426186

2007, \$472.00

Action: Modify the action with concession by the Franchise Tax Board.

Denise A. Sherwood, 436035

2007, \$425.21

Action: Modify the action with concession by the Franchise Tax Board.

Kimberly A. Van Vorst, 450024

2006, \$1.00 or more

Action: Modify the action with concession by the Franchise Tax Board.

Betty J. Wilson, 404993

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES, DENIALS OF CLAIMS FOR REFUND, AND DENIALS OF RELIEF OF PENALTIES, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties, Denials of Claims for Refund, and Denials of Relief of Penalties, Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Home Depot U.S.A., Inc.*, 534309; the Board made the following orders:

Horiba/Stec Incorporated, 520562 (GH)

7-1-03 to 12-31-05, \$138,449.03

Action: Approve the redetermination as recommended by staff.

Roberto Jourdain, 439351 (FH)

7-1-05 to 6-30-06, \$157,569.81

Action: Approve the redetermination as recommended by staff.

Explorer, LLC, 400371 (FH)

7-1-02 to 6-30-05, \$201,966.06

Action: Approve the redetermination as recommended by staff.

Tellabs North America, Inc., 493859 (OH)

4-1-04 to 3-31-07, \$521,285.49

Action: Approve the redetermination as recommended by staff.

Caplugs, LLC., 265927 (OH)

5-10-01 to 9-30-02, \$158,671.97

Action: Approve the redetermination as recommended by staff.

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Home Depot U.S.A., Inc., 534309 (OH)

8-3-09 to 8-30-09, \$3,151,941.06

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Tesoro West Coast Company, LLC, 534321 (OH)

2-1-10 to 2-28-10, \$141,922.23

Action: Approve the relief of penalty as recommended by staff.

Enterprise Rent-A-Car Co. of SF, 534315 (CH)

1-1-10 to 3-31-10, \$274,212.00

Action: Approve the relief of penalty as recommended by staff.

Sharp Electronics Corp., 467812 (OH)

1-1-08 to 6-30-08, \$393,659.72

Action: Approve the denial of claim for refund as recommended by staff.

Flextronics Int'l USA, Inc., 504754 (GH)

7-1-03 to 6-30-06, \$259,165.76

Action: Approve the denial of claim for refund as recommended by staff.

Easy Life Furniture, Inc., 535398 (EA)

10-1-08 to 12-31-08, \$115,000.00

Action: Approve the relief of penalty as recommended by staff.

### **SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Genuine Parts Company, 476502 (OH)*; *Target Corporation, 465794 (OH)*; *Juniper Networks (US), Inc., 511342 (GH)*; and, *Nestle Waters North America, Inc., 459609 (OH)*; the Board made the following orders:

Genuine Parts Company, 476502 (OH)

1-1-04 to 12-31-06, \$220,429.55

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

City of Long Beach, 487853 (EA)

1-1-06 to 12-31-08, \$134,096.88

Action: Approve the refund as recommended by staff.



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Target Corporation, 465794 (OH)

7-1-03 to 12-31-06, \$774,647.97

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

UnionBancal Corporation, 430137 (BH)

10-1-01 to 9-30-04, \$1,518,119.44

Action: Approve the refund as recommended by staff.

Autobahn, Inc., 468839 (BH)

10-1-05 to 9-30-08, \$112,671.71

Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 524606 (EH)

7-1-08 to 9-30-09, \$104,160.00

Action: Approve the refund as recommended by staff.

Varian Medical Systems, Inc., 531503 (GH)

7-1-08 to 9-30-08, \$439,343.56

Action: Approve the refund as recommended by staff.

Hunt & Sons, Inc., 493628 (KH)

10-1-08 to 12-31-08, \$201,801.67

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 519478 (KH)

7-1-09 to 3-31-10, \$927,825.00

Action: Approve the refund as recommended by staff.

Idearc Media Services-West, Inc., 535820 (OH)

7-1-01 to 3-31-09, \$520,851.00

Action: Approve the refund as recommended by staff.

Louis Vuitton North America, Inc., 445179 (OH)

10-1-07 to 12-31-07, \$155,400.57

Action: Approve the refund as recommended by staff.

Juniper Networks (US), Inc., 511342 (GH)

4-1-09 to 6-30-09, \$416,676.75

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

General Petroleum Corporation, 483510 (AA)

10-1-08 to 12-31-08, \$520,228.59

Action: Approve the refund as recommended by staff.

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Nestle Waters North America, Inc., 459609 (OH)

7-1-07 to 12-31-07, \$284,467.91

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Flextronics Int'l USA, Inc., 504754 (GH)

7-1-03 to 6-30-06, \$108,635.97

Action: Approve the refund as recommended by staff.

Coasthills Federal Credit Union, 478187 (GH)

10-1-05 to 12-31-08, \$149,608.80

Action: Approve the refund as recommended by staff.

Balboa Thrift &amp; Loan Association, 520168 (FH)

7-1-09 to 12-31-09, \$191,359.00

Action: Approve the refund as recommended by staff.

Top Auto Finance, Inc., 437892 (AC)

4-1-07 to 9-30-09, \$497,305.25

Action: Approve the refund as recommended by staff.

Premier America Credit Union, 520568 (AC)

7-1-09 to 3-31-10, \$115,705.00

Action: Approve the refund as recommended by staff.

Santander Consumer USA, Inc., 462799 (OH)

1-1-07 to 6-30-09, \$3,178,787.81

Action: Approve the refund as recommended by staff.

Jungheinrich Lift Truck, 476665 (OH)

1-1-05 to 3-31-08, \$135,429.83

Action: Approve the refund as recommended by staff.

### **SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Fidelity National Prop & Cas Ins.*, 535155; the Board made the following orders:

Thrifty Payless, Inc., 491285 (ET)

6-11-09 to 6-11-09, \$112,838.22

Action: Approve the refund as recommended by staff.

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Fidelity National Prop & Cas Ins., 535155 (ET)

1-1-08 to 12-31-08, \$1,037,338.02

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,  
ADJUDICATORY**

Harvinder Singh Pahal and Satvinder Kaur, 487053

2004, \$4,120.00 Assessment

Considered by the Board: September 14, 2010

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Alby, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision modifying the action with concession by the Franchise Tax Board.

Noel Yi and Meiling Yi, 479854

2005, \$76,294.00 Claim for Refund

Considered by the Board: August 24, 2010

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Steel moved to approve the staff recommendation. The motion was seconded by Mr. Horton. The motion was withdrawn.

Ms. Mandel moved to sustain the action of the Franchise Tax Board. The motion was seconded by Mr. Horton. Ms. Mandel withdrew her motion.

The Board deferred consideration of the matter to the following day.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,  
ADJUDICATORY**

Cipriano Espino Salazar, 536110 (AC)

4-1-02 to 8-15-04, \$125,568.93

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the credit and cancellation as recommended by staff.

The Board recessed at 12:58 p.m. and reconvened at 1:39 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

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**SALES AND USE TAX APPEALS HEARINGS****The Auto Store of Merced, Inc., 476975, 478614 (KH)**

10-1-04 to 6-30-06, \$29,488.40 Tax, \$2,948.83 Negligence Penalty

10-1-02 to 6-30-06, \$203,745.33 Tax, \$20,374.52 Negligence Penalty

**Sana Sadeddin, 476973 (KH)**

10-1-04 to 6-30-06, \$29,488.40 Tax, \$2,948.83 Negligence Penalty

For Petitioner:

Adel M. Jaward, Taxpayer

Peter Holtz, Representative

Cynthia Rasho, Witness

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the unreported taxable sales.

Whether adjustments are warranted to the audited amount of bad debts.

Whether petitioners were negligent.

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Faramarz S. Razi and Sidig Hamidi, 475347 (CH)**

1-1-05 to 3-31-08, \$68,311.79 Tax, \$0.00 Negligence Penalty

For Petitioner:

Faramarz S. Razi, Taxpayer

Richard A. Stoll, Attorney

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the unreported taxable sales.

Whether relief from interest is warranted.

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 2:55 p.m. and reconvened at 3:30 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

**Pedotti Livestock, 484288 (UT)**

3-13-07, \$2,069.00 Tax, \$0.00 Failure to File Penalty

For Petitioner:

Robert Pedotti, Taxpayer

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner purchased the vehicle for use in California.

Action: Upon motion of Ms. Alby, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

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Mary Buntz Steel, 450134 (UT)

2-2-06, \$5,349.00 Tax

For Petitioner:

Mary B. Steel, Taxpayer

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the subject aircraft was purchased for use in California.

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Community Flavor, LLC, 469262, 483974 (CH)

1-1-05 to 12-31-07, \$485,485.91 Tax (469262)

1-1-08 to 9-30-08, \$11,941.33 Tax (483974)

For Petitioner:

Erik Miller, Taxpayer

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner's sales of marijuana qualify as exempt sales of medicine.

Whether petitioner's sales of marijuana cookies qualify as exempt sales of food products.

Whether petitioner is entitled to relief of tax and interest based upon reliance on erroneous advice from the Board.

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Mr. Horton absent, the Board ordered that the petition be submitted for decision.

The Board adjourned at 5:00 p.m.

*The foregoing minutes are adopted by the Board on January 27, 2011.*

Note: The following matters were removed from the calendar prior to the meeting: *Douglas Gail Hufnagel and Robyn Hufnagel, 510017; Fernando Olvera Barragan and Claudia Olvera, 436181 (JH); and, Kil Hwan Chang and Myong Jo Chang, 474045.*

**Wednesday, September 15, 2010**

The Board met at its offices at 450 N Street, Sacramento, at 10:11 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,  
ADJUDICATORY**

Noel Yi and Meiling Yi, 479854 (Continued)

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton, Ms. Steel and Ms. Mandel voting yes, Ms. Alby voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD SEPTEMBER 14, 2010**

James N. Smith, 510914

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Sophia A. Dority, 506726

Final Action: Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Mandel voting yes, Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

Teresa Benjamin, 487973

Final Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and duly carried, Ms. Yee, Mr. Horton, Ms. Steel and Ms. Mandel voting yes, Ms. Alby voting no, the Board sustained the action of the Franchise Tax Board.

**SALES AND USE TAX APPEALS HEARING**

Janice Groshak Lami, 476370 (BH)

8-1-04 to 6-30-05, \$2,552.94 Claim for Refund

For Claimant: Appearance Waived

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether claimant is entitled to a refund of the state income tax refunds intercepted by FTB and paid to the Board or the funds collected by levy from the joint checking account.

Whether claimant is entitled to innocent spouse relief with respect to the amounts at issue.

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and duly carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the claim be denied as recommended by the Appeals Division.

Wednesday, September 15, 2010

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
SEPTEMBER 14, 2010**

The Auto Store of Merced, Inc., 476975, 478614 (KH)  
Sana Sadeddin, 476973 (KH)

Final Action: Ms. Alby moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee. Ms. Steel made a substitute motion to remove the penalty for the second audit. Ms. Steel withdrew her original substitute motion.

Upon a new substitute motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Faramarz S. Razi and Sidig Hamidi, 475347 (CH)

Final Action: Upon motion of Mr. Horton, seconded by Ms. Alby and duly carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Mary Buntz Steel, 450134 (UT)

Final Action: Ms. Alby moved to grant the petition. The motion was seconded by Ms. Steel but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Thomas Litawa, 522390

2005, \$484.00 Assessment

For Appellant:

For Franchise Tax Board:

Thomas Litawa, Taxpayer

Amanda Vassigh, Tax Counsel

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether respondent correctly adjusted appellant's itemized deductions.

Whether appellant has shown that respondent Franchise Tax Board (FTB) unreasonably erred or delayed in the performance of a ministerial or managerial act in the processing of his 2005 return such that FTB's denial of interest constitutes an abuse of discretion.

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 11:15 a.m. and reconvened at 11:22 a.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Wednesday, September 15, 2010

**SALES AND USE TAX APPEALS HEARING****Local Tax Reallocation Hearing**

Cities of Los Angeles, Roseville, San Diego and Santa Clara, 422182

1-1-04 to 6-30-10, \$598,216.00 Tax

For Petitioner:

Janis Varney, Representative

Eric Myers, Representative

For Affected Jurisdiction

City of Huntington Beach:

Robin Sturdivant, Representative

For Taxpayer Applied Computer Solutions:

Warren Barnes, Taxpayer

For Sales and Use Tax Department:

Carole Ruwart, Tax Council

Not subject to contribution disclosure pursuant to Government Code section 15626.

Issue: Whether the retailer incorrectly allocated the local sales tax to the headquarters office located in Huntington Beach.

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 12:44 p.m. and reconvened at 1:37 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

**SALES AND USE TAX APPEALS HEARINGS**

Jaswant S. Sra, 437185 (UT)

6-27-05, \$4,471.08 Tax

For Petitioner:

Jaswant S. Sra, Taxpayer

Bill Smyser, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner purchased the subject trailer for use in California.

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Gladys Lillian Martines, 461496 (KH)

10-1-05 to 6-20-06, \$6,610.36 Tax \$1,164.30 Penalty

For Petitioner:

Gladys Lillian Martines, Taxpayer

Douglas Broomell, Attorney

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is liable as a successor for the unpaid liabilities of Milkman Farms Company (Milkman) for the period October 1, 2005, to June 20, 2006.

Whether petitioner has established reasonable cause to relieve the penalties incurred by Milkman.



**Wednesday, September 15, 2010**

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

### **PETITIONS FOR RELEASE OF SEIZED PROPERTY**

Enrique Ayala Rodriguez, 530984 (ET)

2-2-10, \$127,484.00 Approximate Value

For Petitioner:

Enrique Ayala Rodriguez, Taxpayer

Mitchell L. Abdallah, Attorney

For Property and Special Taxes Department:

Stephen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b).

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Ismail Ahmad Karajah, 534141 (ET)

2-10-10, \$78.00 Approximate Value

For Petitioner:

Ismail Karajah, Taxpayer

For Property and Special Taxes Department:

Pamela Mash, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b).

Action: Upon motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

### **SALES AND USE TAX APPEALS HEARING**

Ristoranti Piemontesi, Inc., 488832 (BH)

1-1-05 to 12-31-07, \$41,206.13 Tax

For Petitioner:

Daniel H. Scherotter, Taxpayer

Eric Potashner, Representative

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether relief is warranted based on petitioner's alleged reliance on erroneous advice.

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Wednesday, September 15, 2010

## ADMINISTRATIVE SESSION

### ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California ([Exhibit 9.4](#)).

Michael S. Kopp (deceased), Supervising Tax Auditor II, New York Out-of-State District

Randie L. Henry, Deputy Director, Sales and Use Tax Department

Roberta F. Hinchman, Staff Services Manager I, Procurement Section, Acquisitions Branch

Ramon J. Hirsig, Executive Director of Board of Equalization

Daniel Sakai, Senior Property Appraiser, State-Assessed Properties Division, Property and Special Taxes Department, Headquarters

Action: Approve Board Meeting Minutes of June 15-18, 2010.

Action: Adopt the diesel fuel tax rate for interstate users Component B of \$0.217 per gallon as recommended by staff ([Exhibit 9.5](#)).

Action: Adopt the Hazardous Substances Program Fees and Occupational Lead Poisoning Prevention fee for calendar year 2011 as recommended by staff ([Exhibit 9.6](#)).

Action: Adopt the Emergency Telephone Users Surcharge Rate of 0.50 percent for calendar year 2011 and publish the rate in these Board meeting minutes ([Exhibit 9.7](#)).

Action: Approve the prepayment rate of sales tax on motor vehicle fuel, diesel fuel and jet fuel as recommended by staff ([Exhibit 9.8](#)).

Action: Approve summons to annual meeting of the Board and county assessors ([Exhibit 9.9](#)).

Action: Adopt the property tax forms as presented by staff ([Exhibit 9.10](#)).

Regarding future distribution of Board meeting materials for the prepayment rate of sales tax on motor vehicle fuel, diesel fuel and jet fuel, Ms. Yee directed staff to also include the calculations with the memo, and distribute them to all Board Members earlier.

Exhibits to these minutes are incorporated by reference.

Wednesday, September 15, 2010

## **ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**

### **Business Taxes Committee**

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein ([Exhibit 9.11](#)).

### **Property Tax Committee**

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the Property Tax Committee report and the actions therein ([Exhibit 9.12](#)).

### **Customer Services and Administrative Efficiency Committee**

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein ([Exhibit 9.13](#)).

## **OTHER ADMINISTRATIVE MATTERS**

### **Property and Special Taxes Deputy Director Report**

David Gau, Deputy Director, Property and Special Taxes, provided an overview on the confidentiality of information provided on Form BOE-502-P, *Possessory Interests Annual Usage Report* ([Exhibit 9.14](#)).

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board directed staff to begin the interested parties process, including the county assessors, before the end of the year.

### **Administration Deputy Director's Report**

Liz Houser, Deputy Director, Administration Department, provided an update on the Headquarters Remediation Project and an update on the Headquarters annex locations.

Liz Houser, Deputy Director, Administration Department, provided information regarding the Governor's 2010/11 and 2011/12 Budget, Governor's Executive Orders and State employee furloughs.

Liz Houser, Deputy Director, Administration Department, reported that the 2011/12 Budget Change Proposals that were approved by the Board at its August 25, 2010 meeting were submitted to the Department of Finance (DOF) on September 13, 2010. Ms. Houser also reported that the DOF is exploring early start of Budget Change Proposal: *Enhancing Tax Compliance*.

Wednesday, September 15, 2010

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARING HELD SEPTEMBER 15, 2010**

Thomas Litawa, 522390

Final Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON LOCAL TAX REALLOCATION HEARING HELD  
SEPTEMBER 15, 2010**

Cities of Los Angeles, Roseville, San Diego and Santa Clara, 422182

Final Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Horton and Ms. Alby voting no, the Board ordered that the petition be denied as recommended by the Appeals Division.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
SEPTEMBER 15, 2010**

Jaswant S. Sra, 437185 (UT)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Gladys Lillian Martines, 461496 (KH)

Hee Kim, Tax Counsel, Appeals Division, Legal Department, stated for the record that staff recommends relief of penalty.

Final Action: Ms. Alby moved to grant the petition. The motion was seconded by Ms. Steel but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division, including relief of penalty.

**FINAL ACTION ON PETITIONS FOR RELEASE OF SEIZED PROPERTY HELD  
SEPTEMBER 15, 2010**

Enrique Ayala Rodriguez, 530984 (ET)

Final Action: Upon motion of Mr. Horton, seconded by Ms. Alby and duly carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Mandel voting yes, Ms. Steel voting no, the Board determined that staff properly seized the tobacco products.

**Wednesday, September 15, 2010**

Ismail Ahmad Karajah, 534141 (ET)

Final Action: Upon motion of Ms. Steel, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton, Ms. Steel and Ms. Mandel voting yes, Ms. Alby voting no, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board. Specifically, the Board directed the taxpayer to provide an invoice dated later than the manufacture date of January 10, 2010 but no later than February 10, 2010 – the date the seizure took place, for the two boxes of Swisher Sweets that were exchanged between the taxpayer and the taxpayer's neighbor's store; and also provide any transfer records and a declaration from the taxpayer's neighbor to confirm the exchange.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD  
SEPTEMBER 15, 2010**

Ristoranti Piemontesi, Inc., 488832 (BH)

Final Action: Upon motion of Ms. Alby, seconded by Ms. Steel and duly carried, Ms. Yee, Ms. Alby and Ms. Steel voting yes, Mr. Horton and Ms. Mandel voting no, the Board ordered that the petition be granted and the tax be redetermined accordingly.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD  
SEPTEMBER 14, 2010**

Community Flavor, LLC, 469262, 483974 (CH)

Final Action: Upon motion of Ms. Alby, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, as to issue 1, the Board concluded that petitioner's sales of marijuana do not qualify as exempt sales of medicine, as recommended by the Appeals Division.

Ms. Alby moved to grant the petition as to issue 2, finding that marijuana cookies qualify as exempt sales of food products. The motion failed for lack of a second.

Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton, Ms. Steel and Ms. Mandel voting yes, Ms. Alby voting no, as to issue 2, the Board concluded that petitioner's sales of marijuana cookies do not qualify as exempt sales of food products, as recommended by the Appeals Division.

Upon motion of Ms. Alby, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, as to issue 3, the Board concluded that petitioner is not entitled to relief of tax and interest based upon reliance on erroneous advice from the Board, as recommended by the Appeals Division and directed staff to inform the taxpayer of the Offer in Compromise Program.

Wednesday, September 15, 2010

### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 5:33 p.m. and reconvened immediately in closed session with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

### **CLOSED SESSION**

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 7:20 p.m. and reconvened immediately in open session with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Ms. Yee announced the appointment of Jeff McGuire, Chief, Sales and Use Tax Administration/Tax Policy Division, to the position of Deputy Director, Sales and Use Tax Department.

Ms. Yee also announced that Kristine Cazadd, Chief Counsel, will be acting Executive Director until the position is filled.

The Board adjourned at 7:22 p.m.

*The foregoing minutes are adopted by the Board on January 27, 2011.*